

INTERLOCAL AGREEMENT
BETWEEN ORANGE COUNTY AND THE CITY OF DURHAM
FOR CONSTRUCTION AND OPERATION OF WATER AND SEWER FACILITIES
IN THE ENO ECONOMIC DEVELOPMENT ZONE OF ORANGE COUNTY

This agreement is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham, a North Carolina municipal corporation ("Durham") and Orange County, a North Carolina political subdivision ("Orange").

Purposes. The purposes of this agreement are (1) to further the economic development potential of land identified by Orange County and the City of Durham in their respective planning documents as particularly suitable for industrial development, as well as to promote the public health and safety of residents within the area, and (2) to accomplish the design, construction, and operation of water and sewer services within the Eno Economic Development District.

1. Definitions

Year – July 1 – June 30

Zone – The Eno Economic Development District located at the eastern boundary of Orange where U.S. Highway 70 and Interstate Highway 85 intersect, shown in greater detail by the map titled "Eno Economic Development Zone Utility Service Boundary" and attached as Exhibit A. The Zone does not include land in Durham County.

2. Design. Durham will solicit and receive proposals for the design of water and sewer infrastructure to serve the Zone. Before awarding contracts for such design, Durham will provide Orange with the proposals and other responses to the request for proposals so that Orange may review and comment to Durham regarding the selection of the designer(s). Durham will then proceed to negotiate the professional fees with the designer(s). The fees must be satisfactory to Orange. Durham will not select any designer to which Orange objects based on the qualifications and/or professional fees. If Orange does not object within a reasonable time to a designer and its proposed fee structure, Durham may award a contract to the designer for such design in which the proposed fee structure applies. Orange will reimburse Durham for all payments that Durham is required to pay under the contracts. Therefore, Durham will invoice Orange as invoices are received from the selected designer(s) for payments made or required to be made under the design contracts. Orange will pay each invoice within thirty (30) days after it receives it.
3. Construction. Durham will solicit bids for the construction of the infrastructure. Durham will share the proposals with Orange. Orange may comment to Durham as to which contractor(s) the award should be made. If Durham concurs, and if Durham determines it appropriate to do so, Durham will award the contract(s) to those contractor(s) and execute contract(s) with them. If Durham does not concur, or if Durham otherwise finds it appropriate to rebid, Durham will rebid and continue the process described in this paragraph until Durham makes an award unless the Durham City Manager and the Orange County Manager jointly agree to suspend or abandon the process. By authorizing their respective managers to sign this agreement, the parties' governing bodies authorize them to agree to suspend or abandon the

process if they jointly determine it is prudent to do so. If the managers do not jointly agree it is prudent to suspend or abandon the process, it is agreed that suspension or abandonment will not be effective unless the parties' governing bodies jointly agree to suspend or abandon.

4. Payment. For each construction contract, Orange will select payment option A or payment option B and will notify Durham of its selection within twenty days after Durham shall have executed the construction contract. *Payment option A:* Durham will invoice Orange from as invoices are received from the selected construction contractor for payments made or required to be made under the construction contracts. Orange will pay each invoice within thirty (30) days after it receives it. *Payment option B:* Orange will reimburse Durham for payments made or required to be made under the construction contracts over a 10-year period, beginning on substantial completion, at an annual interest rate of 5%. The remainder of this paragraph applies to both payment options. [Provided however Orange shall not be required to pay for services that were not appropriately authorized or ratified by Durham or which Durham did not find to be satisfactorily performed by the contractor, provided that Durham will not be liable to Orange for making a finding of satisfactory performance. Durham will insert in the construction contracts a provision stating, "Orange County, a N. C. political subdivision, is a third-party beneficiary of this contract."
5. Construction Standards. In all respects except to the extent otherwise stated in this contract, the construction will be done in accordance with (i) Durham standards, requirements, and procedures, including approvals of plans, conducting inspections, requiring tests and certifications, and requiring as-built drawings, and (ii) any applicable federal and state standards.
6. Ownership of and Responsibility for Infrastructure. Durham will be the owner of and responsible for the operation and maintenance of the infrastructure constructed under the construction contracts. All construction contracts shall provide for the indemnification and defense by the contractors of both Orange and Durham.
7. Fees and Charges. As long as a particular property is located outside Durham's corporate limits, Durham will impose, process, and collect all fees and charges with respect to that particular property, including acreage fees, connection charges, frontage charges, capacity charges, and utility rates, as Durham charges on other locations outside Durham's corporate limits. Except to the extent specified otherwise, Orange will have no right to any of those fees and charges, and nothing in this agreement will affect the use or disposition of those fees and charges.
8. Reduction in Payments from Orange. The acreage fees and frontage charges collected by Durham from the Zone will be used towards payment of the design and the construction of the infrastructure (collectively, the "Dedicated Receipts"). ("Acreage fees" means impact fees (as defined in Durham City Code sections 30-81 et seq.) that are based on area.) No other fees or charges collected by Durham, such as capacity and connection charges, will be used for that purpose. The amounts to be paid by Orange to Durham under paragraph 4 above in a particular Year will be reduced by the Dedicated Receipts received by Durham in that Year. If the Dedicated Receipts received by Durham in that Year exceed the amounts to

be paid by Orange under paragraph 4 in that Year, the excess Dedicated Receipts will be carried forward and used similarly to reduce the amounts to be paid by Orange under paragraph 4 in the following Years. The Dedicated Receipts received only during the ten Years beginning on the first July 1 after substantial completion of the relevant infrastructure will be applied in this manner. Nevertheless, the ten Year period shall end on or before the expiration of fifteen Years beginning on the first July 1 after the date of this contract. Nothing herein means that Durham will make any payment to Orange on the ground that the Dedicated Receipts exceed, in any Year or Years, the amounts to be paid by Orange under paragraph 4. If Durham is required by a court of competent jurisdiction to refund any acreage fees or frontage charges that were used towards payment of the design and the construction of the infrastructure by means of the Dedicated Receipts process described above in this paragraph, Orange shall reimburse Durham (i) to the extent the amounts paid by Orange to Durham under paragraph 4 above in a particular Year were reduced by the Dedicated Receipts attributable to the amounts refunded, and (ii) for interest associated with the refunds of the acreage fees or frontage charges that Durham is required to pay by a court of competent jurisdiction.

9. Nondiscriminatory Policies. Durham will not establish policies that impose a level of water and sewer service in the Zone that is inferior to that provided to similarly situated users of Durham water and sewer services.
10. Annexation. Durham may enter into agreements with developers and property owners that they will comply with requirements that Durham desires related to annexation, including that they will not seek annexation by any municipality other than Durham; that they will petition for annexation when requested by Durham; and that they will be subject to remedies for violating the annexation-related provisions.
11. Regulations. Durham shall have the authority to protect and regulate the water and sewer systems and its users in the Zone, including water use restrictions and regulations respecting introduction of pollutants into the wastewater system.
12. Duration. This agreement shall be perpetual, unless terminated earlier by mutual agreement. Nevertheless, this contract shall terminate if construction of the infrastructure has not begun within three (3) years of the date of this agreement. On such termination, all obligations that are still executory on both sides are discharged but any right based on prior breach or performance survives. The governing body of each party hereto has determined the duration provided in this paragraph to be reasonable.
13. Appointment of Personnel. The City Manager shall designate persons to carry out Durham's obligations under this agreement. The County Manager shall designate persons to carry out Orange's obligations under this agreement.
14. Amendment and Termination. This agreement may be amended or terminated by agreement of the parties. An amendment is not valid unless signed by both parties and otherwise in accordance with requirements of law. An amendment is not enforceable against Durham unless it is signed by its City Manager, or a deputy or assistant City Manager. An

amendment is not enforceable against Orange unless signed by the County Manager or Chair of the Board of County Commissioners.

15. Notice.

- (a) All notices and other communications required or permitted by this agreement shall be in writing and shall be given either by personal delivery, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To Durham:
Mr. Thomas J. Bonfield
City Manager
City of Durham
101 City Hall Plaza
Durham, NC 27701-3329
Email: tom.bonfield@durhamnc.gov

To Orange:
Frank Clifton
Orange County Manager
200 S. Cameron Street
P.O. Box 8181
Hillsborough, NC 27278
Email: fclifton@co.orange.nc.us

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this agreement shall be deemed given and sent at the time of actual delivery, if it is personally delivered. If the notice or other communication is sent by United States mail, it shall be deemed received upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

16. No Third Party Rights Created. This agreement is intended for the benefit of the two parties and not any other person and no rights or benefits are created for or granted to any third party by this agreement.

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Durham Finance Director



Orange Financial Services Director

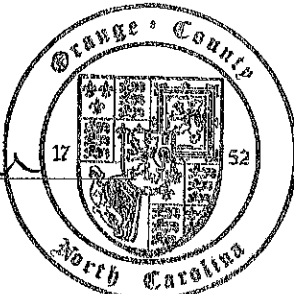
CITY OF DURHAM

ATTEST:

Clerk

By: _____
Thomas J. Bonfield
City Manager

ATTEST:

Orange County Clerk


COUNTY OF ORANGE

By: _____
Frank Clifton, Jr.
County Manager

NORTH CAROLINA ACKNOWLEDGMENT OF CITY OF DURHAM
COUNTY of _____

I, a Notary Public in and for the aforesaid County and State certify that

_____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement with the County of Orange was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 20 _____

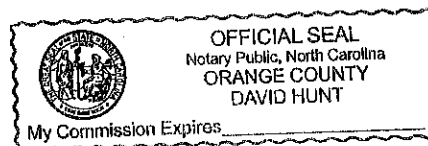
Notary Public
My commission expires: _____

NORTH CAROLINA ACKNOWLEDGMENT OF COUNTY OF ORANGE
COUNTY of Orange

I, a Notary Public in and for the aforesaid County and State certify that

Donna S. Baker personally appeared before me this day, and acknowledged that he or she is the Orange County Clerk of the County of Orange, a North Carolina political subdivision, and that by authority duly given and as the act of the County, the foregoing agreement with the City of Durham was signed in its corporate name by its Orange County Manager, sealed with its corporate seal, and attested by its said County Clerk or Deputy County Clerk. This the 11th day of October, 20 11

David Hunt
Notary Public
My commission expires: June 7, 2014



Approved as to form and legal sufficiency.

J. P.
County Attorney